

[Submitting counsel below]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE: UBER TECHNOLOGIES, INC.,
PASSENGER SEXUAL ASSAULT
LITIGATION

No. 3:23-md-03084-CRB

**PLAINTIFFS' SUPPLEMENTAL BRIEF
REGARDING FLORIDA, ILLINOIS, AND
NEW YORK LAW**

This Document Relates to:
ALL ACTIONS

Judge: Honorable Charles R. Breyer
Date: TBD
Time: TBD
Courtroom: TBD

1 Plaintiffs submit this supplemental brief, as ordered by the Court during the August 29,
 2 2024, case management conference, to present their views on how the Court’s order deciding
 3 California and Texas law applies to claims in the Master Complaint under Florida, Illinois, and
 4 New York law.¹

5 **I. Vicarious Liability Statutes**

6 The Court held that a Texas statute precluded vicarious liability for cases arising after
 7 September 1, 2023 where the plaintiff does not prove gross negligence. *See* Order at 12-14. There
 8 are no similar statutes in Illinois or New York.

9 In Florida, Uber argues that Fla. Stat. 627.748(18)(a) similarly precludes vicarious
 10 liability. But, unlike the Texas statute, the Florida statute by its terms applies only where “the
 11 motor vehicle caused harm to persons or property.” *Id.* § 627.714(18)(a)(3). That language does
 12 not encompass sexual assault cases. *See* Opp’n at 18. In addition, unlike Texas, Florida precedent
 13 interprets parallel language in the insurance context to not encompass sexual assault. *See id.*
 14 (citing *Farrer v. U.S. Fidelity & Guar. Co.*, 809 So. 2d 85, 88, 95 (Fla. App. 2002)). Accordingly,
 15 vicarious liability theories are permitted in Florida.²

16 **II. Claim B: Negligent Entrustment**

17 The Court held that in both California and Texas, “negligent entrustment cases uniformly
 18 concern instrumentalities that are themselves inherently dangerous in some way,” reserving
 19 potential liability under general negligence theories. Order at 38. Accordingly, the Court
 20 dismissed “separate cause[s] of action” for “negligent entrustment” under the laws of both states.

21 The reasoning of the Court’s order applies to Florida, Illinois, and New York, and the
 22 standalone negligent entrustment claims may be dismissed on that basis in all three states.

23 **III. Claim C: Fraud and Misrepresentation**

24 The Court dismissed fraud claims under California and Texas law with leave to amend
 25 due to “the lack of particular allegations about who saw and relied on which representations and
 26

27 ¹ Plaintiffs preserve all rights to seek review of the Court’s order either on reconsideration,
 through amended pleadings, or on appeal.

28 ² Should the Court disagree, Plaintiffs note the statute became effective only on June 23, 2020,
 and does not apply retroactively.

when they saw them.” Order at 35. This application of Rule 9(b) applies to fraud claims under Florida, Illinois, and New York law, and those claims can be similarly dismissed.

IV. Claim D: Negligent Infliction of Emotional Distress

The Court dismissed Plaintiffs’ NIED claim under California law because, in that state, NIED is not “an independent cause of action.” Order at 38. The Court’s ruling applies to claims under Illinois and New York law. *See* Opp’n at 89 (grouping these states). Those claims can be dismissed.

Florida, however, recognizes a distinct NIED claim. *See id.* at 90. For the reasons explained in Plaintiffs’ briefing, that claim is adequately pleaded. *See id.* (discussing physical-impact and special-relationship rules).

V. Claim E: Common Carrier Non-Delegable Duties

The Court issued two rulings with respect to common carrier liability: (1) in Texas, Uber is by statute exempt from such liability; and (2) in California, Uber’s common carrier duties are breached when its drivers sexually assault passengers. *See* Order at 31-35. These holdings have different implications for each of the three states.

Florida. Unlike what the Court found in Texas, Florida’s TNC statute excludes Uber from the definition of “common carrier” only for regulatory purposes (i.e., in creating a new regulatory category of “transportation network company,” exempting Uber from the web of regulations that would otherwise apply). Plaintiffs rely on Florida-specific precedents for that point. *See* Opp’n at 32-33 (discussing *Nazareth v. Herndon Ambulance Serv., Inc.*, 467 So. 2d 1076, 1080 (Fla. App. 1985) and *Esurance Prop. Cas. & Ins. Co. v. Vergara*, 2021 WL 2955962, at *6 (S.D. Fla. June 29, 2021)). The Court should assess those arguments and decline to dismiss common carrier claims in Florida.³

If the Florida TNC statutes do not preclude common-carrier liability, then the scope of that duty is the same as the Court found in California. *See* Opp’n at 34-35.

Illinois. Effective January 1, 2024, Illinois repealed its statute that excluded Uber from the

³ Should the Court disagree, Plaintiffs note the statute became effective only on June 23, 2020, and does not apply retroactively.

definition of common carrier. For cases arising after that date, Uber's Illinois common-carrier duties are the same as those the Court identified in California. *See* Opp'n at 35-36.

New York. Claim E was not pleaded in New York.

VI. Claim F: Other Non-Delegable Duties

The Court accepted Plaintiffs' concession that Claim F should be dismissed under California and Texas law. That concession applies to Florida, Illinois, and New York law as well.

VII. Claim G.1: Respondeat Superior

The Court held that respondent superior claims were viable in California because that state "does not follow the traditional common law rule that intentional torts can only be considered 'within the scope of employment' where the employee acts to serve the employer's interests." Order at 15. In New York, Plaintiffs did not plead respondeat superior claims. In Florida, Plaintiffs did plead such claims, but withdrew them in opposition to the motion to dismiss. *See* Opp'n at 3. Finally, in Illinois, courts recognize respondeat superior liability with the allegations here because "the sexual assaults were all initiated through an Uber ride, conduct authorized and enabled by the drivers' employment." Opp'n at 47. But Plaintiffs concede that the basis for the Court's California holding (that state's departure from the Restatement) does not apply in Illinois.

VIII. Claim G.2: Apparent Agency

The Court held that Plaintiffs' apparent agency claims in California and Texas turned on whether the state would recognize sexual assault as potentially within the scope of Uber drivers' employment. *See* Order at 24-28 (California yes, Texas no). The Court's order requires dismissal of apparent agency claims in Florida and New York. In Illinois, the apparent agency claims rise and fall with the respondeat superior analysis above.

IX. Claim G.3: Ratification

The Court dismissed ratification claims in California and Texas with leave to amend for lack of allegations that "support a plausible inference that Uber knew about any given incident" or that "permit inferences about what actions Uber took with respect to particular drivers." Order at 30. The Court's conclusion applies to the laws of Florida, Illinois, and New York (the relevant legal standards may differ somewhat, as the Court suggested in reviewing California and Texas

law, but those differences were not the bases of the Court’s ruling).

X. Claim H: Strict Products Liability

The Court issued four rulings with respect to Plaintiffs’ strict products liability claims: (1) that the Uber app “would be considered a product under the Restatement”; (2) “Uber can be liable for defects in the app”; (3) Plaintiffs adequately pleaded “defects [that] concern the design of the app itself”; and (4) “Plaintiffs’ products liability claims founder on the absence of individual allegations that make the causation allegations plausible.” Order at 42-47.

Each of the Court’s four rulings applies to the laws of Florida, Illinois, and New York. *See* Opp’n at 91-106; Reply at 47-59 (making the same arguments under each state’s law). Accordingly, under the Court’s order, strict products liability claims in those three states should be dismissed with leave to amend.

XI. Claim I: UCL / Injunctive Relief

The Court held that Plaintiffs failed to plead standing to seek injunctive relief. *See* Order at 48-52. The Court’s ruling applies to all Plaintiffs, regardless of choice-of-law, and those claims should be dismissed with leave to amend (and, in any event, without prejudice).

XII. Punitive Damages

The Court held that Plaintiffs adequately pleaded requests for punitive damages under applicable federal pleading standards and the substantive laws of California and Texas (finding Texas law “more challenging”). *See* Order at 52-54. The Court’s analysis and conclusion regarding “malice” under California law requires denial of Uber’s motion to dismiss such relief under the laws of Florida, Illinois, and New York. *See* Opp’n at 116-20 (Florida—“gross negligence”; Illinois—“malice”; New York—“high degree of moral culpability” or “wanton or reckless disregard”).

1 Dated: September 13, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2024 I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF No. system, which will automatically send notification of the filing to all counsel of record.

By: /s/ Andrew R. Kaufman